

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
EASTERN DIVISION

JOHN D. ROGERS

PLAINTIFF

vs.

Civil Action No. 1:94cv303-D-D

DOLPH BRYAN, individually and
in his official capacity as
Sheriff of Oktibbeha County,
Mississippi, and MIRIAM COOK, individually
and in her official capacity as Circuit
Clerk of Oktibbeha County, Mississippi

DEFENDANTS

MEMORANDUM OPINION

Presently before the court is the motion of the defendant Dolph Bryan for the entry of summary judgment on his behalf. Finding the motion partially well taken, the same shall be granted in part and denied in part.

Factual Summary¹

On or about October 24, 1994, the plaintiff John D. Rogers was convicted of a felony in the Circuit Court of Oktibbeha County, Mississippi. The plaintiff was placed in the custody of the defendant Dolph Bryan, in his capacity as Sheriff of Oktibbeha County, Mississippi. The presiding state court judge, Circuit

¹ In ruling on a motion for summary judgment, the court is not to make credibility determinations, weigh evidence, or draw from the facts legitimate inferences for the movant. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 255, 106 S.Ct. 2505, 91 L.Ed.2d 202 (1986). Rather, the evidence of the nonmovant is to be believed, and all justifiable inferences are to be drawn in his favor. Anderson, 477 U.S. at 255. The court's factual summary is so drafted in this memorandum opinion.

Judge Lee J. Howard, executed a sentencing order on October 25, 1994, which stated in part that "bond pending appeal is hereby set at \$75,000.00, and the new bond cannot be made until the appeal, if any, is perfected."

The plaintiff's attorney, Mr. Wilbur O. Colom, filed on behalf of the plaintiff a Notice of Appeal with the Oktibbeha County Chancery Clerk on October 26, 1994. Two days later, on October 28, plaintiff's counsel presented an appeal bond in the amount of \$75,000.00 to Sheriff Bryan for his approval. The Sheriff then contacted the Circuit Clerk, Ms. Miriam Cook, and inquired about the status of Rogers' appeal. Ms. Cook informed the Sheriff that Rogers had not perfected an appeal, whereupon the Sheriff refused to accept the bond and release the plaintiff. According to the plaintiff, Mr. Colom then explained to the Sheriff and Ms. Cook that pursuant to the dictates of Mississippi Rule of Appellate Procedure 3, the plaintiff's appeal was in fact perfected.² The Sheriff nonetheless refused to accept the appeal bond and release Mr. Rogers.

² Mississippi Rule of Appellate Procedure 3 states in relevant part:

In all cases, both civil and criminal, in which an appeal is permitted by law as of right to this Court, there shall be one procedure for perfecting such appeal. That procedure is prescribed in these rules. . . . An appeal permitted as a matter of right from a trial court to this Court shall be taken by filing a notice of appeal with the clerk of the trial court within the time allowed by Rule 4.

Miss. R. App. P. 3(a).

The dispute concerning the release of Mr. Rogers on appeal bond centered upon whether payment of costs was a prerequisite for "perfection" of the plaintiff's appeal. This fact is evidenced by a letter sent to the Sheriff by Ms. Cook concerning this matter, the body of which stated:

This is to advise that the payment of costs for appeal, designation [sic] of the record and certificate of compliance by the defendant, has not been filed in this office as of this date, October 28, 1994, at 3:55 p.m.

I am enclosing a copy of the Order of Sentence, and Clerk's estimate of Costs For Appeal for your records.

Immediately upon Defendant Rogers perfecting his appeal in accordance with the Rules, this office will notify your office in the usual manner.

Defendant's Motion for Summary Judgment, Exhibit #2. Based upon the facts as presently before the court, it is unclear from the parties' submissions exactly what these costs entail.³ In any event, these costs were paid, and Mr. Rogers was subsequently

³ The most likely "costs" referred to are the costs of preparation of the record for purposes of appeal, and the Mississippi Rules of Appellate Procedure also provide a timetable for such. Miss. R. App. P. 11(b)(1) provides:

Within seven (7) days after filing the notice of appeal, the appellant shall estimate the cost of preparation of the record on appeal, including, but not limited to, the cost of the preparation of the transcript, and shall deposit that sum with the clerk of the court whose judgment or order has been appealed. The applicant shall simultaneously file with the clerk of the trial court a certificate setting forth compliance with this subparagraph and shall serve a copy of the certificate upon all other parties, upon the court reporter, and upon the Supreme Court Clerk.

Miss. R. App. P. 11(b)(1).

released on bond on October 31, 1994.

The plaintiff filed this action on October 28, 1994, asserting causes of action arising under 42 U.S.C. § 1983 for violation of his rights under the Fourth, Fifth, Eighth and Fourteenth Amendments to the Constitution of the United States. The defendant Bryan has now moved the court for the entry of summary judgment on his behalf, and asserts that he is entitled to the protection of qualified immunity.

DISCUSSION

I. SUMMARY JUDGMENT STANDARD

Summary judgment is appropriate "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." F.R.C.P. 56(c). The party seeking summary judgment carries the burden of demonstrating that there is an absence of evidence to support the non-moving party's case. Celotex Corp. v. Catrett, 477 U.S. 317, 325, 106 S. Ct. 2548, 2553, 91 L.Ed.2d 265 (1986). Once a properly supported motion for summary judgment is presented, the burden shifts to the non-moving party to set forth specific facts showing that there is a genuine issue for trial. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 249, 106 S. Ct. 2505, 2511, 91 L.Ed.2d 202 (1986); Brothers v. Klevenhagen, 28 F.3d 452, 455 (5th Cir. 1994). "Where

the record, taken as a whole, could not lead a rational trier of fact to find for the non-moving party, there is no genuine issue for trial." Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 587, 106 S. Ct. 1348, 89 L.Ed.2d 538 (1986); Federal Sav. & Loan Ins. v. Kralj, 968 F.2d 500, 503 (5th Cir. 1992). The facts are reviewed drawing all reasonable inferences in favor of the party opposing the motion. Matagorda County v. Russel Law, 19 F.3d 215, 217 (5th Cir. 1994).

II. SHERIFF BRYAN'S ENTITLEMENT TO QUALIFIED IMMUNITY

Whenever qualified immunity is asserted as an affirmative defense, resolution of the issue should occur at the earliest possible stage. Anderson v. Creighton, 483 U.S. 635, 639, 107 S. Ct. 3034, 97 L.Ed.2d 523 (1987); Elliott v. Perez, 751 F.2d 1472, 1478 (5th Cir. 1985). Issues of qualified immunity are determined from the face of the pleadings and without extended resort to pre-trial discovery. Babb v. Dorman, 33 F.3d 472, 477 (5th Cir. 1994). Public officials, including law enforcement officers, are entitled to assert the defense of qualified immunity in a § 1983 suit for discretionary acts occurring in the course of their official duties. Harlow v. Fitzgerald, 457 U.S. 800, 806, 102 S. Ct. 2727, 73 L.Ed.2d 396, 403 (1982); Gagne v. City of Galveston, 805 F.2d 558, 559 (5th Cir. 1986); Jacquez v. Procunier, 801 F.2d 789, 791 (5th Cir. 1986).

Public officials are shielded from liability for civil damages

as long as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known. Davis v. Scherer, 468 U.S. 183, 194, 104 S. Ct. 3012, 3019, 82 L.Ed.2d 139 (1984); Harlow v. Fitzgerald, 457 U.S. 800, 818, 102 S. Ct. 2727, 2738, 73 L.Ed.2d 396 (1982); White v. Walker, 950 F.2d 972, 975 (5th Cir. 1991); Morales v. Haynes, 890 F.2d 708, 710 (5th Cir. 1989). Stated differently, qualified immunity provides "ample protection to all but the plainly incompetent or those who knowingly violate the law." Malley v. Briggs, 475 U.S. 335, 341, 106 S. Ct. 1092, 1096, 89 L.Ed.2d 271 (1986).

The first step in the inquiry of the defendant's claim of qualified immunity is whether the plaintiff has alleged the violation of a clearly established right. Siegert v. Gilley, 500 U.S. 266, 111 S. Ct. 1789, 114 L.Ed.2d 277, 287 (1991). This inquiry necessarily questions whether or not the officer acted reasonably under settled law in the circumstances with which he was confronted. Hunter v. Bryant, 502 U.S. 224, 112 S. Ct. 534, 116 L.Ed.2d 589, 596 (1991); Lampkin v. City of Nacogdoches, 7 F.3d 430 (5th Cir. 1993). "If reasonable public officials could differ on the lawfulness of the defendant's actions, the defendant is entitled to qualified immunity." Blackwell v. Barton, 34 F.3d 298, 303 (5th Cir. 1994) (quoting Pfannstiel v. Marion, 918 F.2d 1178, 1183 (5th Cir. 1990)). Even if Sheriff Bryan violated the

plaintiff's constitutional rights, he is entitled to immunity if his actions were objectively reasonable. Blackwell, 34 F.2d at 303.

A. VIOLATION OF A CLEARLY ESTABLISHED RIGHT

It is the contention of the plaintiff that he has alleged the violation of a "clearly established right" because under Mississippi statutory law, he possesses a clearly established right to appeal his conviction to the Mississippi Supreme Court. Miss. Code Ann. § 99-35-101. While this may be true, in order to demonstrate an actionable claim under 42 U.S.C. § 1983, the plaintiff must demonstrate the violation of a clearly established right under federal law - not under state law. See, e.g., Foster v. City of Lake Jackson, 28 F.3d 425, 428 (5th Cir. 1994); Walton v. Alexander, 20 F.3d 1350, 1360 (5th Cir. 1994); Grady v. El Paso Community College, 979 F.2d 1111, 1114 (5th Cir. 1992). Despite any statutory right to appeal that the plaintiff may enjoy under Mississippi law, there is no federal constitutional right to an appeal in a criminal case. Myers v. Collins, 8 F.3d 249, 252 (5th Cir. 1993). Likewise, there is no federal constitutional right to release on bail after conviction and sentencing. United States v. Williams, 822 F.2d 512, 517 (5th Cir. 1987).

However, the plaintiff has nonetheless articulated the violation of a clearly established federal right - the right to be free from illegal detention. The Fifth Circuit recognizes a cause

of action arising under § 1983 for illegal detention (aka "false imprisonment"). Sanders v. English, 950 F.2d 1152, 1159 (5th Cir. 1992); Simmons v. McElveen, 846 F.2d 337 (5th Cir. 1988). "An individual has a federally protected right to be free from unlawful . . . detention resulting in a significant restraint in liberty and violation of this right may be grounds for suit under § 1983." Parker v. Fort Worth Police Dep't, 980 F.2d 1023, 1026 (5th Cir. 1993) (quoting Sanders, 950 F.2d at 278). "[T]he infliction of punishment when not authorized by state law is a classic instance of denial of liberty without due process of law." Huddleston v. Shirley, 787 F.Supp. 109, 111 (N.D. Miss. 1992) (quoting Salahuddin v. Coughlin, 781 F.2d 24, 27 n.4 (2nd Cir. 1986)). The term "false imprisonment" with regard to this claim is somewhat of a misnomer, for it is insufficient under § 1983 to merely establish the elements of the common law tort of the same name. More than mere negligence must be shown to establish liability for illegal detention under § 1983. Daniels v. Williams, 474 U.S. 327, 106 S.Ct. 662, 88 L.Ed.2d 662 (1986); Simmons, 846 F.2d at 339; Martin v. Dallas County, 822 F.2d 553, 555 (5th Cir. 1987). The right of a person to be free from unlawful detention was well-established long before any of the events giving rise to this cause of action occurred. In any event, it is the opinion of this court that the plaintiff has adequately alleged the violation of a clearly established right. The court must now make an objective

determination of the reasonableness of Sheriff Bryan's actions under the circumstances in this cause.

B. THE REASONABLENESS OF SHERIFF BRYAN'S ACTIONS

Before this court can determine whether the actions of the Sheriff were objectively reasonable, the court first notes the extent of the Sheriff's duty in this regard. This court has recently addressed the duty of a sheriff to hold or release prisoners in his care, and noted that:

This court is of the opinion that the duty imposed upon Texas Sheriffs under Fifth Circuit law is equally applicable to those in Mississippi:

[T]he duty . . . is one to investigate. [cite omitted]. Douthit clarifies this duty by indicating that the investigation must yield "objective circumstances" justifying a good faith belief that there exists lawful authority to incarcerate the prisoner. It is not enough that the sheriff investigates, and has a "good faith" belief at the end of the investigation. Nor is it enough that the sheriff can find some excuse for his failure to investigate. In these senses, as Whirl put it, non-negligence is no modifier of the sheriff's liability, and the law will not sanction unjustified chains forged by the hand of an angel.

Brown v. Byer, 870 F.2d 975, 980 (5th Cir. 1989). While a sheriff/jailer cannot be expected to conduct detailed independent investigations into a prisoner's guilt or innocence, he should certainly be required to "adopt reasonable internal procedures to ensure that only those persons are incarcerated for whom the sheriff, or the deputy to whom he delegates such responsibilities, has a good faith belief based upon objective circumstances that he possesses valid legal authority to imprison." Brown, 870 F.2d at 981 (quoting Douthit, 641 F.2d at 347); see Williams v. Heard, 533 F.Supp. 1153 (S.D. Tex. 1982). Such procedures would at least entail devising a method to effectuate the release of prisoners when their legal term of detention is complete, including those pre-trial

detainees who await grand jury action.

Hollands v. Attala County, et. al., Civil Action No. 1:94cv206-D-D (N.D. Miss. July 31, 1995) (Memorandum Opinion and Order Denying Defendants' Motion for Summary Judgment). The question for this court, then, is whether the Sheriff satisfied his duty to investigate and had objective circumstances within his knowledge to warrant a good faith belief that he had lawful authority to continue to hold Mr. Rogers in custody.

The sentencing order signed by the presiding judge in the state court criminal case plainly stated that "bond cannot be made until the appeal, if any, is perfected." As well, the Uniform Criminal Rules of Circuit Court impose a similar restriction upon the Sheriff. Miss. Unif. Crim. R. Cir. Ct. 7.02 ("The Sheriff shall not accept the appeal bond unless the appeal has been perfected."). Indeed, this rule is likely the origin of this provision of Judge Howard's order. In any event, this requirement imposes to some extent a duty on the part of the Sheriff to determine when an appeal has been perfected.

In the case at bar the defendant has offered evidence, and the plaintiff does not dispute, that it was the regular practice of Sheriff Bryan to call the Circuit Clerk's office to determine if an appeal had been perfected in a prisoner's case before he released that prisoner on an appeal bond. This certainly qualifies as investigation, but it is the contention of the plaintiff in this

matter that the Sheriff did not do enough. The plaintiff would have had Sheriff Bryan make "an independent determination as to whether the Circuit Clerk was correct," because the Sheriff had notice that the Notice of Appeal had been filed.

The followed procedure and the Sheriff's reliance upon the opinion of the Circuit Clerk appears to the court to be sufficient as a method for determining the status of a prisoner's appeal on the part of Bryan, and satisfies the Sheriff's duty in this regard. Just as the Sheriff has no duty to conduct "detailed independent investigations into a prisoner's guilt or innocence," he likewise cannot be expected to infallibly make legal determinations. It is the opinion of this court that a Mississippi sheriff has the right to rely upon the judgments of the Circuit Clerk in matters which fall within the Clerk's duties and responsibilities.⁴ The plaintiff faults the Sheriff for not reaching the proper determination upon his own, based upon the information available to him at the time. That the Sheriff may also have been incorrect in a legal determination does not mean that he is not entitled to immunity. It is the opinion of this court that reasonable public officials could have differed on the lawfulness of the Sheriff's

⁴ At this juncture, it does appear that the Circuit Clerk's determination that Mr. Rogers' appeal was not perfected was erroneous. See Miss. R. App. P. 3 ("Failure of an appellant to take any step other than the timely filing of a notice of appeal **does not affect the perfection of an appeal**, but is ground for such action as this court deems appropriate, which may include dismissal of the appeal.") (emphasis added).

actions in this matter, particularly in light of the Circuit Clerk's representations. Sheriff Bryan is entitled to the protection of qualified immunity in this cause.

However, the protection of qualified immunity only shields the Sheriff from liability in his individual capacity. Williams v. Texas Tech Univ. Health Sciences Ctr., 6 F.3d 290, 293 (5th Cir. 1993); Richardson v. Oldham, 12 F.3d 1373, 1380 (5th Cir. 1994). Further, it only provides protection from monetary damages, and not from injunctive relief. Orellana v. Kyle, 65 F.3d 29, 33 (5th Cir. 1995); Mangaroo v. Nelson, 864 F.2d 1202, 1208 (5th Cir. 1989). The plaintiff's claims for damages against him in his individual capacity shall be dismissed, but this case shall proceed against Dolph Bryan in his individual capacity insofar as the plaintiff seeks injunctive relief against him, and shall also proceed against the Mr. Bryan in his official capacity as Sheriff of Oktibbeha County, Mississippi.

A separate order in accordance with this opinion shall issue this day.

This the _____ day of January, 1995.

United States District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
EASTERN DIVISION

JOHN D. ROGERS

PLAINTIFF

vs.

Civil Action No. 1:94cv303-D-D

DOLPH BRYAN, individually and
in his official capacity as
Sheriff of Oktibbeha County,
Mississippi

DEFENDANT

ORDER GRANTING IN PART THE DEFENDANT'S
MOTION FOR SUMMARY JUDGMENT

Pursuant to a memorandum opinion issued this day, it is hereby
ORDERED THAT:

1) the motion of the defendant Dolph Bryan for the entry of
summary judgment on his behalf is hereby GRANTED IN PART;

2) all of the plaintiff's claims for damages against the
defendant Dolph Bryan in his individual capacity are hereby
DISMISSED pursuant to the doctrine of qualified immunity. This
cause shall proceed against defendant Bryan in his individual
capacity insofar as the plaintiff has stated claims for injunctive
relief against him. The plaintiff's claims against the defendant
Bryan in his official capacity as Sheriff of Oktibbeha County shall
likewise proceed.

3) the remainder of the defendant Bryan's motion for summary
judgment is DENIED.

All memoranda, depositions, affidavits and other matters

considered by the court in granting in part and denying in part
defendant Bryan's motion for summary judgment are hereby
incorporated and made a part of the record in this cause.

SO ORDERED, this the _____ day of January, 1995.

United States District Judge